

SENATE BILL No. 469

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-9-2-30; IC 31-9-2-83; IC 31-14; IC 31-16-6; IC 31-17-2-25.

Synopsis: Child support emancipation age. Lowers the age of emancipation from 21 years of age to 18 years of age for purposes of child support obligations if the child: (1) graduates from high school; or (2) is not enrolled in or is not continuously attending high school. Terminates court ordered child support regardless of educational circumstances after a child becomes 19 years of age, unless the child is incapacitated. Retains a court's ability to order secondary school educational expenses after the child reaches 19 years of age if the child has not obtained a high school diploma as the result of a physician documented illness. Permits court ordered postsecondary educational expenses under certain circumstances. Requires the child to maintain
(Continued next page)

Effective: July 1, 1999.

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January 13, 1999, read first time and referred to Committee on Judiciary.



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at least a C grade average under certain circumstances in order to be eligible to receive parental financial support for the child's postsecondary education. Prohibits a court from ordering a parent to pay for a child's educational expenses that exceed the costs assessed by a public institution of higher learning. Makes the payment of court ordered child support in dissolution of marriage and paternity cases mandatory. Prohibits a custodial parent from voluntarily withdrawing the parent's child from school without the noncustodial parent's consent unless withdrawing the child from school is the result of a physician documented illness. Allows a court to escrow child support payments until the child is reenrolled in school unless the court determines that the escrowing of child support payments is likely to harm the child's best interests. Makes conforming changes.

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Introduced

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

SENATE BILL No. 469

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 31-9-2-30 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 30. "Custodial parent",
3 for purposes of IC 31-14-13-8, **IC 31-14-13-12**, IC 31-14-15,
4 IC 31-17-2-22, **IC 31-17-2-25**, and IC 31-17-4, means the parent who
5 has been awarded physical custody of a child by a court.

6 SECTION 2. IC 31-9-2-83 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 83. "Noncustodial
8 parent" for purposes of IC 31-14-13-10, **IC 31-14-13-12**, IC 31-14-15,
9 **IC 31-17-2-25**, and IC 31-17-4, means the parent who is not the
10 custodial parent.

11 SECTION 3. IC 31-14-11-2 IS AMENDED TO READ AS
12 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. The court ~~may~~ **shall**
13 order either or both parents to pay any reasonable amount for child
14 support after considering all relevant factors, including the following:

15 (1) The financial resources of the custodial parent.



(2) The standard of living the child would have enjoyed had the parents been married and remained married to each other.

(3) The physical and mental condition of the child.

(4) The child's educational needs.

(5) The financial resources and needs of the noncustodial parent.

SECTION 4. IC 31-14-11-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. (a) ~~Where appropriate, The support order may~~ **must include the following, where appropriate:**

(1) Money for the child's **elementary and secondary** education, ~~beyond grade 12~~, after the court has considered

~~(A) the child's aptitude and ability~~

~~(B) the child's reasonable ability to contribute to educational expenses through:~~

~~(i) work;~~

~~(ii) obtaining loans; and~~

~~(iii) obtaining other sources of financial aid reasonably available to the child and the parent or parents; and~~

~~(C) the ability of the parents to meet these expenses. An order for the child's educational needs under this subdivision continues until:~~

(A) the child is emancipated under section 18 of this chapter; or

(B) further order of the court if the child has not obtained a high school diploma by the time the child becomes nineteen (19) years of age as the result of a physician documented illness.

(2) Special medical, hospital, or dental expenses necessary to serve the best interests of the child.

(3) Fees mandated under Title IV-D of the federal Social Security Act (42 U.S.C. 651 through 669). ~~and~~

(4) Basic health and hospitalization insurance coverage for the child.

(b) If, however, the Title IV-D agency initiates action to establish or modify a support obligation and petitions the court to include basic health and hospitalization insurance coverage in the support order, the court shall consider including a provision for this insurance coverage if the insurance coverage is available to the parent at reasonable cost.

SECTION 5. IC 31-14-11-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 4.5. Subject to IC 31-16-6-6.5, a court may order, where appropriate, sums for the child's**



educational expenses for tuition, room and board, books, fees, supplies, and any necessary tutoring at an institution of higher learning. Whenever the court orders educational expenses at an institution of higher learning in a paternity case under this chapter, the court shall consider the factors described in IC 31-16-6-2(b) relating to educational expense orders arising out of a dissolution of marriage case.

SECTION 6. IC 31-14-11-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 18. (a) **Except for an order relating to a child's educational needs under section 3 or 4.5 of this chapter or incapacity under subsection (b),** the duty to support a child under this article (or IC 31-6-6.1 before its repeal) ceases ~~when the child becomes twenty-one (21) years of age unless either of the following conditions occurs:~~ **upon the earliest of the following:**

(1) The child is emancipated ~~before the child becomes twenty-one (21) years of age.~~ If this occurs, the child support, except for educational needs, terminates at the time of emancipation. However, an order for educational needs may continue in effect until further order of the court.

(2) The child is incapacitated. If this occurs, the child support continues during the incapacity or until further order of the court: **as described in IC 31-16-6-6(a)(1).**

(2) The child:

(A) is emancipated because the child is at least eighteen (18) years of age; and

(B) graduates from high school.

(3) The child:

(A) is emancipated because the child is at least eighteen (18) years of age; and

(B) is not enrolled in or is not continuously attending high school.

However, the child is not emancipated under this subdivision if the child's absence from school is the result of a physician documented illness.

(4) The child is emancipated because the child is at least nineteen (19) years of age.

(b) The duty to support a child continues if the child is incapacitated, in which case the child support obligation continues:

(1) during the child's incapacity; and

(2) until further order of the court.

SECTION 7. IC 31-14-13-12 IS ADDED TO THE INDIANA



CODE AS A NEW SECTION TO READ AS FOLLOWS
 [EFFECTIVE JULY 1, 1999]: **Sec. 12. (a) Notwithstanding any other law, a custodial parent may not voluntarily withdraw the parent's child from school without the consent of the noncustodial parent unless withdrawing the child from school is the result of the child having a physician documented illness.**

(b) A violation of this section is punishable as contempt of court.

(c) A noncustodial parent may apply for an injunction or a temporary restraining order against a custodial parent who violates this section.

(d) A court may not require an applicant for a temporary restraining order or an injunction under this section to provide security.

(e) If the court finds that a custodial parent is in contempt of court for violating this section, the court may order the clerk of the court to hold future child support payments in escrow until the child is reenrolled in school. However, the court may not escrow child support payments under this subsection if the court determines the order is likely to harm the best interests of the child.

SECTION 8. IC 31-16-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. In an action for dissolution of marriage under IC 31-15-2, legal separation under IC 31-15-3, or child support under IC 31-16-2, the court ~~may~~ **shall** order either parent or both parents to pay any amount reasonable for support of a child, without regard to marital misconduct, after considering all relevant factors, including:

- (1) the financial resources of the custodial parent;
- (2) the standard of living the child would have enjoyed if:
 - (A) the marriage had not been dissolved; or
 - (B) the separation had not been ordered;
- (3) the physical or mental condition of the child and the child's educational needs; and
- (4) the financial resources and needs of the noncustodial parent.

SECTION 9. IC 31-16-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) The child support order or an educational support order ~~may~~ **must** also include ~~the following~~, where appropriate:

- (1) Amounts for the child's education in elementary and secondary schools, ~~and at institutions of higher learning~~, taking into account
- ~~(A)~~ the child's aptitude and ability



~~(B)~~ the child's reasonable ability to contribute to educational expenses through:

(i) work;

(ii) obtaining loans; and

(iii) obtaining other sources of financial aid reasonably available to the child and each parent; and

~~(C)~~ the ability of each parent to meet these expenses. **An order for the child's educational needs under this subdivision continues until:**

(A) the child is emancipated under section 6 of this chapter; or

(B) further order of the court if the child has not obtained a high school diploma by the time the child becomes nineteen (19) years of age as the result of a physician documented illness.

(2) Special medical, hospital, or dental expenses necessary to serve the best interests of the child. ~~and~~

(3) Fees mandated under Title IV-D of the federal Social Security Act (42 U.S.C. 651 through 669).

(b) If the court orders support for a child's educational expenses at an institution of higher learning under subsection (a); the court shall reduce other child support for that child that:

(1) is duplicated by the educational support order; and

(2) would otherwise be paid to the custodial parent.

Subject to section 6.5 of this chapter, a court may order, where appropriate, sums for the child's educational expenses for tuition, room and board, books, fees, supplies, and any necessary tutoring at an institution of higher learning after taking into account:

(1) the child's aptitude and ability;

(2) the child's reasonable ability to contribute to educational expenses through:

(A) work;

(B) obtaining loans; and

(C) obtaining other sources of financial aid reasonably available to the child and the child's parent or parents; and

(3) the ability of the parent or parents to meet these expenses.

SECTION 10. IC 31-16-6-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. (a) **Except for an order for a child's educational needs under section 2 of this chapter or incapacity under subsection (b),** the duty to support a child under this chapter ceases ~~when the child becomes twenty-one (21) years of age unless any of the following conditions occurs:~~



(1) The child is emancipated before becoming twenty-one (21) years of age. In this case the child support, except for the educational needs outlined in section 2(a)(1) of this chapter, terminates at the time of emancipation, although an order for educational needs may continue in effect until further order of the court.

(2) The child is incapacitated. In this case the child support continues during the incapacity or until further order of the court.

(3) The child:

(A) is at least eighteen (18) years of age;

(B) has not attended a secondary or postsecondary school for the prior four (4) months and is not enrolled in a secondary or postsecondary school; and

(C) is or is capable of supporting himself or herself through employment.

In this case the child support terminates upon the court's finding that the conditions prescribed in this subdivision exist. However, if the court finds that the conditions set forth in clauses (A) through (C) are met but that the child is only partially supporting or is capable of only partially supporting himself or herself, the court may order that support be modified instead of terminated.

(b) For purposes of determining if a child is emancipated under subsection (a)(1) if the court finds that: **upon the earliest of the following:**

(1) The child is emancipated because the child:

(1) (A) has joined the United States armed services;

(2) (B) has married; or

(3) (C) is not under the care or control of:

(A) (i) either parent; or

(B) (ii) an individual or agency approved by the court.

the court shall find the child emancipated and terminate the child support.

(2) The child is emancipated because the child:

(A) is at least eighteen (18) years of age; and

(B) graduates from high school.

(3) The child is emancipated because the child:

(A) is at least eighteen (18) years of age; and

(B) is not enrolled in or is not continuously attending high school.

However, the child is not emancipated under this subdivision if the child's absence from school is the result of a physician documented illness.



(4) The child is emancipated because the child is nineteen (19) years of age.

(b) The duty to support a child continues if the child is incapacitated, in which case the child support obligation continues:

(1) during the child's incapacity; and

(2) until further order of the court.

SECTION 11. IC 31-16-6-6.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6.5. (a) A court may not order costs for a child's educational expenses at an institution of higher learning that exceed the average costs assessed by the institution of higher learning that the child attends or plans to attend, or the actual expense, if less. However, if the child attends a private institution of higher learning, the court may not order costs that exceed the average costs assessed by an Indiana state supported institution that offers a similar course of study.

(b) This subsection does not apply to a child's first year of study at an institution of higher learning or to any academic period in which the child experiences exigent circumstances, such as the child's illness or the death of a parent. A court may not order sums for a child's educational expenses at an institution of higher learning if the child does not maintain at least a C grade average or its equivalent following any semester in which the child did not maintain at least a C grade average or its equivalent.

SECTION 12. IC 31-17-2-25 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 25. (a) Notwithstanding any other law, a custodial parent may not voluntarily withdraw the parent's child from school without the consent of the noncustodial parent, unless withdrawing the child from school is the result of the child having a physician documented illness.

(b) A violation of this section is punishable as contempt of court.

(c) A noncustodial parent may apply for an injunction or a temporary restraining order against a custodial parent who violates this section.

(d) A court may not require an applicant for a temporary restraining order or an injunction under this section to provide security.

(e) If the court finds that a custodial parent is in contempt of court for violating this section, the court may order the clerk of the court to hold future child support payments in escrow until the child is reenrolled in school. However, the court may not escrow



1 **child support payments under this subsection if the court**
2 **determines that the order is likely to harm the best interests of the**
3 **child.**

4 SECTION 13. IC 31-14-11-4 IS REPEALED [EFFECTIVE JULY
5 1, 1999].

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